

RFP DOS 2013 – 049
ADDENDUM 6
INITIAL Questions and Answers

#	PG. NO.	QUESTION	ANSWER
E-124	Appendix E-4, Hearings & Violations Requirements, Requirement E-4- 26	What is the “Renewal Notice +C11 date”? Is this the same as all the other Renewal Notice dates referenced in the requirements?	" +C11" is incorrectly stated in the requirements and should read as "Renewal Notice - Letter Date". See Contract Amendment in Addendum 7.
25	4.12.2, The Contractor	Would the State consider revising the limitation of liability cap for the Contractor to be amounts paid to Contractor by State to date for software delivered under the contract?	The State will reduce the required liability cap to 1.5 times contract value. See Contract Amendment in Addendum 7.
H-3 (381)	Appendix H, Section 13, Indemnification	Would the State consider revising this clause to just cover third party claims against the State and its officers and employees for personal injury property damage, and breach of the Contractors confidentiality obligations under the contract, where the foregoing are caused solely and directly by Contractor's neglect or intentional acts and omissions.	No, the State does not agree to make the suggested modification.
23	Section 4.11.1 Termination for Default	Section 4.11.1 of the General Contract Requirements refers to Termination for Default. Vendor proposes that only a material breach of the Contract by the Vendor that is not remedied within 30 days of notice to rectify such breach shall constitute “Event of Default”. Further, the Vendor proposes deletion of actions as contemplated in a (apart from termination right), b, c and e on occurrence of any “Event of Default”. Is this acceptable to the State?	No, the State does not agree to make the suggested modification.

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24	Section 4.11.3 Termination for Conflict of Interest	Section 4.11.3 of the General Contract Requirements refers to Termination for Conflict of Interest. Vendor proposes that any termination for conflict of interest should be confined to only conflict of interest, per se, as proven by virtue of evidence and not otherwise.	The State will modify Section 4.11.3 to say that the State must make a “reasonable” determination of conflict of interest. See Contract Amendment in Addendum 7.
25	Section 4.12.2 The Contractor	Section 4.12.2 of the General Contract Requirements refers to Limitation of Liability of the Contractor. Vendor proposes that its liability should be limited to fees that it had received from the State in the preceding six months. Further, limitation of liability should not apply only to Vendor’s indemnification obligation with regard to a) third party IP breach solely due to acts of the Vendor, b) confidentiality breach by the Vendor, c) death or personal injury solely due to acts of the Vendor and d) damage to tangible property. Is this acceptable to the State?	No, the State does not agree to make the suggested modification.
H-2 (380)	Appendix H, Contract Price/Price Limitation/Payment Section 5.3	Section 5.3 of the “Appendix H: State of New Hampshire Terms and Conditions” pertains to offset of liquidated amounts. Vendor proposes that any such liquidated amounts shall not exceed 3% of the Contract value and any offset shall be with mutual consent of the parties. Is this acceptable to the State?	No, this is required by State law.
H-3 (381)	Appendix H, Section 13, Indemnification	Section 13 of the “Appendix H: State of New Hampshire Terms and Conditions” pertains to indemnification. Vendor proposes the same to be subject to the Limitation of Liability as proposed in with regard to Section 4.12.2 of the General Contract Requirements above. Is this acceptable to the State?	No, the State does not agree to make the suggested modification.

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13	Section 3.3.2 Remedies	<p>In the event that System testing reveals an issue and corrections need to be made, Section 3.3.2 requires Vendor to make such corrections “within the time allotted by the State”. Section 3.3.1 requires Vendor to provide a plan to verify the code works to fulfill the requirements of the project described under the RFP (as defined on Page 53, the “Test Plan”).</p> <p>If the Vendor can describe a correction time in the Test Plan, would the State consider changing the phrase “within the time allotted by the State” to “within the time allotted pursuant to the Test Plan” in the first sentence of Section 3.3.2?</p>	The State will agree to change the provisions of 3.3.2 to read “within the time allotted in the State approved test plan”. See Contract Amendment in Addendum 7
14	Section 3.4.3 Viruses; Destructive Programming	<p>3.4.3 requires that the Software not contain any viruses or other harmful or malicious code. The Vendor cannot control what happens to the Software after it is implemented into the State’s systems.</p> <p>Would the State consider changing to limit this warranty to the condition of the Software at the time it is delivered to the State (e.g., change the first sentence of Section 3.4.3 to “The Vendor shall warrant that, as delivered by Vendor, the Software will not...”)?</p>	The State will agree to change language to read that the Software <u>as accepted by the State</u> shall not contain any viruses or other harmful or malicious code. See Contract Amendment in Addendum 7

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14	Section 3.4.6 Warranty Services	<p>Section 3.4.6 requires Vendor to “maintain, repair and correct deficiencies in the Software...”</p> <p>Would the State consider to limiting the obligations in Section 3.4.6 to deficiencies arising from breach of the warranties in Sections 3.4.1-3.4.5 (e.g., Changing the first sentence in Section 3.4.6 to “The Vendor shall agree to maintain, repair and correct deficiencies in the Software resulting from breach of the warranties set forth in Sections 3.4.1-3.4.5...”)?</p>	No, the State does not agree to make the suggested modification.
17	Section 3.6.6 State-Owned Documents and Data	<p>Section 3.6.6 states that the State owns “Documents” and “work in progress”.</p> <p>Can the State provide a definition of these terms to clarify the State’s intent?</p>	The State will modify 3.6.6 to use the term “documents” replacing “Documents” and it shall have its common meaning. The term “work in progress” shall refer to any item not in its final form. See Contract Amendment in Addendum 7.
17	Section 3.6.7 Intellectual Property	<p>Section 3.6.7 states that Vendor owns customizations of the Software made for the State (“Software Customizations”) and modifications of the Software made to address requirements of the State (“Modifications”). Vendor grants to the State a perpetual, irrevocable license to “produce, publish and otherwise use” such Software Customizations and Modifications, including the source code and Documentation therefor.</p> <p>Would the State consider limiting their rights granted by the Vendor to not publish the Vendor’s source code, object code and/or modifications provided by the Vendor under Section 3.6.7?</p>	No, the RFP language limits the State’s ability to publish to purposes of the State and not external entities.

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19	Section 3.6.14 Confidential Information	Would the State consider allowing the Vendor to treat all source code delivered under this contract as Vendor Proprietary Information under the provisions of RSA 91-A:5 IV and VI?	We agree that it would be treated under the provisions of RSA 91-A:5 IV
21	Section 4.8 Change Orders	<p>Section 4.8 provides that the State may make changes to the requirements under the RFP by issuing a Change Order to Vendor. In response to a Change Order, Vendor is obligated to provide a revised schedule and budget for any such change, but does not have the ability to reject any change.</p> <p>If a change is requested by the State, but the Vendor is unable to perform that change, would the State consider a change to the language of Section 4.8, as follows: “The State may make <u>request</u> changes or revisions at any time by written Change Order. <u>Vendor shall consider any such request in good faith, and, Wwithin</u> five (5) business days of a Vendor’s receipt of a Change Order, the Vendor shall advise the State <u>if it is able to undertake the changes described in such Change Order, and, if so, it will provide information</u>, in detail, of any impact on cost (e.g., increase or decrease), the Schedule, or the Project Schedule.”</p>	The State will retain current wording. The process contained in the RFP is reasonable and provides a vehicle for expressing any difficulties arising from the Change Order.

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23 H-3 (381)	Section 4.11.1 Termination for Default Appendix H, Section 8, Event of Default/Remedies	<p>a) The remedy described in the second subparagraph (b) of Section 4.11.1 and Appendix H, Section 8.2.2 allow the State to suspend payment until the Event of Default is remedied. However, there is no end date, so the State has the ability to require performance by Vendor without payment for an indefinite period of time.</p> <p>Would the State consider adding an end date, after which time the State will be required to terminate the Contract if it does not want to pay the Vendor (e.g., add to the end of this section the following: <i>“If the Event of Default is not remedied in ninety (90) days, the State must either (i) resume payment to Vendor or (ii) terminate this Agreement with written notice to Vendor.”</i>)?</p> <p>b) The remedy described in subparagraph (d) of Section 4.11.1 and Appendix H, Section 8.2.4 allow the State to treat the Contract as breached in an Event of Default and pursue any of its available remedies. There is no cure period before this option may be exercised, and this option does not require the State to terminate the Contract, which could have the effect of the State suing the Vendor while still requiring the Vendor to perform under the Contract.</p> <p>Would the State consider adding a cure period and a requirement to terminate the Contract if not cured (e.g., <i>“For any Event of Default that is not cured within thirty (30) days after written notice to Vendor, the State may terminate this Contract and</i> treat the Contract</p> <p>c) The remedy described in subparagraph (e) of this Section allows the State to procure the Services that are the subject of the Contract</p>	No, the State does not agree to make the suggested modification.

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		and procure Services that are the subject of the Contract from another source and the Vendor shall be liable for reimbursing the State for the reasonable value of replacement Services, and all administrative costs (not to exceed \$[____]) directly related to the replacement of the Contract and procuring the Services from another source...”)?	
24	Section 4.11.1 Termination for Default	<p>The second to last paragraph of Section 4.11.1 provides that Vendor shall give the State notice and 30 days to cure any default. There is no termination right for Vendor in the event of a default by the State.</p> <p>Would the State consider adding a termination right if the State does not cure a default (e.g., add the following to the end of the second to last sentence of Section 4.11.1: <i>“If such default is not cured within such thirty (30) day period, Contractor may terminate this Agreement and pursue any of its remedies at law or in equity, or both.”</i>)?</p>	No, the State does not agree to make the suggested modification.
24	Section 4.11.4 Termination Procedure	<p>The first paragraph of Section 4.11.4 states “Upon termination of the Contract, the State, in addition to any other rights provided in the Contract, may require the Vendor to deliver to the State any property, including without limitation, Software and Written Deliverables, for such part of the Contract as has been terminated.”</p> <p>Can the State provide clarification for what is considered “any property” in Section 4.11.4?</p>	The State will replace the wording “any property” to “property which is in or has been in the control of the Vendor or subcontractors”.

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25	Section 4.12.2 The Contractor	<p>a) Vendor's liability is limited to 2X the total Contract price, except that indemnification obligations and breaches of confidentiality are unlimited.</p> <p>Would the State consider a limitation of liability to 1X the Contract price?</p>	The State will reduce the required liability cap to 1.5 times contract value. See Contract Amendment in Addendum 7.
25	Section 4.13 Change of Ownership	<p>Section 4.13 allows the State to immediately terminate the Contract in the event of a "change of ownership" of Vendor.</p> <p>Could the State clarify what is meant by "change of ownership"?</p>	The language in the RFP is sufficiently clear.
H-2 (380)	Appendix H, Compliance by Contractor with Laws and Regulations/ Equal Employment Opportunity, Section 6.3	<p>The last paragraph of Section 6.3 requires Vendor to allow the State to audit Vendor's records to ensure compliance with all the requirements of the Contract.</p> <p>Would the State consider a change to the language in Appendix H, Section 6.3 as follows: "The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement <u>this Section 6. Any such access shall be at Contractor's premises, during Contractor's normal business hours, with reasonable advance written notice to Contractor and shall be performed in such a manner that does not materially interfere with Contractor's normal business operations. Any such access shall be limited to once per calendar year during the term of this Agreement and shall be conducted at the State's expense.</u>"?</p>	No, the State does not agree to make the suggested modification.

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H-3 (381)	Appendix H, Section 9, Data/Access/ Confidentiality/ Preservation	<p>Section 9 describes the ownership by the State of “data” and property received by the State under the Agreement. Section 9.1 defines “data” as “all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.”</p> <p>Would the State consider a change to exclude the Software and Vendor’s other pre-existing technology (e.g., add the following to the end of Section 9.2 “<u>Notwithstanding the foregoing, Contractor shall own all information, ideas, inventions, know-how, methods, processes, software, templates, tools, works of authorship, trade secrets and technologies that are (a) owned by Vendor (whether developed by or for Vendor or otherwise acquired from a third party) prior to the Effective Date or (b) developed or acquired by Vendor separate and apart from this Agreement, including all modifications, enhancements or derivatives of any of the foregoing.</u>”</p>	The State does not agree to make the suggested modification. See RFP Section 3.6.7.

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H-3 (381)	Appendix H, Section 13, Idemnification	<p>Section 13 describes Vendor’s indemnification obligations.</p> <p>Would the State consider the following change to Section 13 in Appendix H: “The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, <u><i>in each case resulting from any claim, action or proceeding brought by a third party</i></u> on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the <u><i>grossly negligent</i></u> acts or omissions of the Contractor <u><i>or Contractor’s willful misconduct. The foregoing obligation will be conditioned upon the State (a) giving Contractor sole control over the defense and settlement of any such claim, action or proceeding, (b) providing Contractor with reasonable assistance in connection with any such claim, action or proceeding and (c) providing Contractor with prompt written notice of any such claim, action or proceeding.</i></u>”</p>	The State does not agree to make the suggested modification.
H-4 (382)	Appendix H, Section 22, Special Provisions	<p>Section 22 references “additional provisions” in the attached Exhibit C.</p> <p>Could the State provide Exhibit C referenced in Appendix H, Section 22?</p>	Exhibit C will be finalized when the contract resulting from the RFP is finalized.

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43	Section 6.1.5, Proposed Project Team, Qualifications for Key Personnel Table, Lead Business Analyst	The qualification for Lead Business Analyst requires "minimum of six (6) years' experience as a Business Analyst associated with a late generation DMV registration and inventory development projects." This requirement seems unduly prescriptive and it seems to focus on a subject area that is part of the optional services. Would the state consider revising this requirement to read: "Minimum of six (6) years' experience as a Business Analyst, including at least two (2) years associated with a late generation DMV project"?	The State will agree to change the language for the Lead Business Analyst. See Contract Amendment in Addendum 7.
39	Section 5.5.1, New Hampshire Certificate of Authority or Certificate of Good Standing	Please confirm that the Certificate of Authority/Certificate of Good Standing does not need to be submitted at the time of proposal.	The Certificate of Authority/Certificate of Good Standing must be furnished by the selected Vendor once the Contract has been awarded. The Vendor does not need to submit these certificates at the time of proposal.